IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 140 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T C - Appellant(s)
Versus
KAMLESHCHANDRA NAGINLAL MEHTA & 1 - Defendant(s)

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Appearance :
MS MAYA DESAI for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
DELETED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/08/2007

ORAL JUDGMENT

Ms. Maya Desai, learned counsel for the appellant; name of the respondent no.2 has

already been deleted; none for the respondent no.1 though served.

2. The appellant-Gujarat State Road Transport Corporation [GSRTC], being aggrieved by the judgment and award dated 2.12.89 passed by the Motor Accident Claims Tribunal [Main], Bharuch in Motor Accident Claims Petition No. 851 of 1986 is before this Court with a submission that the learned Tribunal erred in holding that the driver of the offending bus was 100% rash and negligent.

3. The short facts necessary for disposal of the present appeal are that after a bus which was going ahead of another bus No. GRV 6694, stopped on the side of the road, the claimant alighted and thereafter when he was trying to cross the road from the front side of the stationary bus, the offending vehicle no. GRV 6694 hit him which led to number of the injuries to the claimant. The claimant filed the claim for recovery of Rs. 2.00 lacs but however, the learned Tribunal awarded a sum of Rs. 1,20,750/- only.

4. The defence of the GSRTC and the driver was

that without taking any care for one's own safety, the claimant came in front of the bus and as the accident was inevitable and unavoidable, the GSRTC and driver of the bus could not be held liable. The learned Tribunal rejected all the defences of the present appellant and made award in favour of the claimant.

5. Ms. Desai, learned counsel for the appellant, after taking me through the evidence and statement of the claimant submitted that after alighting from the stationery bus, when the claimant was trying to cross the road, before entering upon the centre of the road, the claimant should have taken care to see on both the sides of the road and if he missed that care and caution, then, he was also negligent to some extent.

6. After going through the evidence which is available on the records I am unable to hold that the claimant was negligent even to 1%. After alighting from the bus when he was trying to cross the road, then, any person who was

trying to overtake the stationary bus was required to drive with care and caution and see that nobody from the front side of the stationary bus comes to the centre of the road. In the present case, the evidence available on the records would clearly show that the driver of the offending bus lacked in exercising due care and caution.

7. So far as the question of compensation is concerned, in the opinion of this Court, looking to the nature of the injuries and income, I am unable to hold that the Tribunal was unjustified in making the award in favour of the claimant.

8. The appeal deserves to and is accordingly dismissed. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-